



## FORCED MIGRATION AND THE OSMOTIC PRESSURE OF POVERTY<sup>1</sup>

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I am a product of migration, displacement and exile. For several generations, my progenitors experienced deportation, banishing, confinement, internment and other forms of persecution. I am therefore sensitive to the nuances around the notion of migration and feel quite comfortable saying that what appears at first sight to be *voluntary* movement of people—presumably in pursuit of a better life—does not equate *per se* to migration.<sup>3</sup>

Protocol 4 to the European Convention on Human Rights proscribes collective expulsions, regardless of nationality, as well as the removal of own nationals from a country's territory (Articles 3 and 4).<sup>4</sup> Measures intended to bring about change to ethnic or population landscapes are equally prohibited by international law.<sup>5,6</sup>

Forced displacement has been a common occurrence throughout history. Despite international law prohibitions, various forms of unlawful forced displacements continue

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<sup>3</sup> For further reading on the conceptual, technical, sentimental or archaeological definitions of migration see for example: *Council of Europe, Compass: Manual for Human Rights Education with Young people* <https://www.coe.int/en/web/compass/migration>

<sup>4</sup> *Council of Europe*, European Convention for the Protection of Human Rights and Fundamental Freedoms (aka European Convention on Human Rights, or ECHR) (1950) and Protocol No. 4 securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto.

<sup>5</sup> *Council of Europe*, Framework Convention for the Protection of National Minorities (1995).

<sup>6</sup> Cf. also 1949 Fourth Geneva Convention, Article 49.

to the present day. Attempts to embellish efforts to cause demographic or ethnographic change have adopted labels such as relocation, population transfers, repopulation, colonisation and even “plantation”.

Individual motivation and the degree of actual freedom involved in shaping decisions are obviously a decisive factor in defining forced migration. But personal autonomy may not be alone in shaping what otherwise appears to be free will. There may be external *incentives* that are equally or more important in shaping decisions. Various forms of persuasion and subtle or disguised compulsion may well weigh in on individual decisions.

**Poverty is—and extreme poverty and exclusion can be—one of the drivers of migration.**

The Inter-American Commission of Human Rights has characterised poverty as one of the more concerning human rights situations.<sup>7</sup> At global level, Article 11 of the International Covenant on Economic, Social and Cultural Rights stipulates a right to an adequate standard of living, including adequate food, clothing and housing. In our continent, Article 30 of the European Social Charter provides that everyone has the right to protection against poverty and social exclusion.<sup>8</sup>

*Living in a situation of poverty and social exclusion violates the dignity of human beings. Living at risk of falling into poverty and exclusion is damaging for the person, not only as regards dignity, but it also entails suffering, loss in cognitive function and social abilities. Risk of poverty and actual poverty and exclusion also compromise the exercise of a range of other rights, both social and economic (employment, health, education, housing, etc.) and civil and political rights (private and family life, association and opinion) and ultimately involves total disenfranchisement. Leaving no one behind and protection against poverty and social exclusion are not just a question of statistics but are a primary human rights requirement, universal in scope, and it is therefore a matter of priority and of resources.<sup>9,10</sup>*

Arguably, poverty is neither inevitable nor irremediable. Quite the contrary according to a United Nations Special Rapporteur on extreme poverty and human rights: “Poverty is

<sup>7</sup> IACHR, Report on poverty and human rights in the Americas (2017).

<sup>8</sup> Forty-three of the Council of Europe’s 47 member states have ratified the original (1961) or the revised (1996) European Social Charter, but only 18 countries have accepted to be bound by Article 30.

<sup>9</sup> ECSR, questions to states parties to the European Social Charter on Group 2 provisions (health, social security and social protection) for Conclusions 2021 (2020).

<sup>10</sup> Cf. also United Nations Sustainable Development Goals and Agenda 2030.

ultimately a political choice, and governments can, if they wish, opt to overcome it.”<sup>11</sup> Be it incompetence or unwillingness (a form of corruption when human rights are at stake), when a state fails to secure the fundamental right to protection against poverty, the pressure in favour of migration increases.

It can therefore be argued that poverty is a policy-enabled *incentive*—which can reach the level of compulsion—that can influence individual motivation and decisions about migration. A closer look at this phenomenon is in order, given that international human rights law prohibits the expulsion or the forcible or involuntary movement or transfer of individuals or groups of people, regardless of motive.

International law offers examples of the types of measures used as incentives in these unlawful transfers. They include expropriations, evictions and expulsions or the redrawing of administrative borders with a view to restricting the enjoyment of rights and freedoms.<sup>12</sup>

High living standards attract migrants in search of work, opportunity or prosperity. This is *the pull effect*, incentives that some forms of poverty will respond to. But poverty at its worst, destitution and extreme vulnerability, are more likely to respond to *the push* than the pull: eviction without alternative, homelessness and its criminalisation, persecution of poverty and the elimination of the last vestiges of social transfers and benefits.

The ultimate “expulsion” materialises when persons suffering from exclusion are evicted from their already sub-standard dwellings without being offered an alternative or when their dwellings are rendered uninhabitable, when they are deprived of the scant social benefits they receive, when they suffer pogroms and are persecuted or imprisoned because of homelessness or poverty, when they lose the last illusion of safety.<sup>13</sup> **These are**

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<sup>11</sup> Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, statement on his visit to Spain, 27 January – 7 February 2020.

<sup>12</sup> Council of Europe, Framework Convention for the Protection of National Minorities (1995), Article 16: “The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.” Cf. also the Convention’s Explanatory Report.

<sup>13</sup> On the notion of “expulsion”, see Saskia Sassen, *Expulsions - Brutality and Complexity in the Global Economy*, Harvard University Press (2014). See also ECHR, Hudorovič and Others v. Slovenia, judgment of 10 March 2020, the European Court of Human Rights ruled that lack of access to clean water and sanitation over an extended period could be detrimental to health and dignity, thus compromising the enjoyment of the right to private life and to a home within the meaning of Article 8 ECHR. However, the Court rejected the claim that the failure by the authorities to ensure such access to applicants who were living in permanent settlements under such conditions involved a breach of ECHR rights. Similarly, expulsion can be conducted through pogroms (see for example ECHR, Burlya and others v. Ukraine, judgment of 6 November 2018) or by criminalising poverty or homelessness. See for example the Vagrancy Act 1824 and *H. Cromarty, G. Sturge, D. Pyper*, *Rough Sleepers and Anti-Social Behaviours* (England), House of Commons Library (2019); or *European Parliament*, Parliamentary questions, Question for written answer E-005370-18 to the Commission, Subject: Criminalisation of homelessness in Hungary (2018).

**policy—or political—choices that enable to export poverty.** A perverse logic capable of sweeping the problem under, or onto, someone else's carpet.

This is a relatively modern phenomenon, possibly a grotesque transmogrification of temporary social cleansing used in the past by authoritarian regimes to conceal poverty from visiting dignitaries. The homeless and other persons suffering from extreme exclusion were the victims of those poverty-related mopping-up operations.

There have always been trickles of poverty-induced voluntary migration around the world, trickles that sometimes became waves. That has changed – we can no longer deceive ourselves regarding poverty as a natural occurrence. Economic progress has not benefitted everyone equally or equitably. Poverty is not just a fact and it is not for people who experience poverty to carry the can. Poverty is a result of policy choices that shape distribution of income, of wealth, of opportunity and of wellbeing.

The voluntarist, political dimension of poverty must be taken squarely into the equation.

Put in simple terms:

- **If** today poverty and extreme poverty are not inevitable;
- **And** they are ultimately a political choice or a result of political choices;
- **Plus**, poverty creates a propitious environment for migration;
- **But** governments wilfully choose not to address these occurrences;
- **It follows that** political choices and policy decisions which—foreseeably—keep people in poverty, increase poverty or drive people into poverty, encourage migration.

For some, migration may involve real prospects of improvement. However, for many others—for those who are furthest behind<sup>14</sup>—the only reasonable expectation is to change the scenario where they experience poverty, but not to overcome it. For them, prospects of employment or betterment may be illusory, an illusion that can render them vulnerable to exploitation or human trafficking.

Those who suffer from extreme exclusion can only aspire to move from inadequate housing or homelessness in one place, to inadequate housing or homelessness in another

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<sup>14</sup> See *UN General Assembly*, Transforming our world: 2030 Agenda for Sustainable Development, A/RES/70/1 (2015)

place; from poorly employed or unemployed, to unemployed or to becoming victims of labour exploitation or human trafficking elsewhere. These transitions bring about a heightened risk for children and women.

Even assuming some doubtful and haphazard access to a social safety net elsewhere, the result would at best be a slight improvement in one fragment of the multiple facets of the poverty kaleidoscope. For those furthest behind, the odds of coming out of poverty by migrating are [almost] nil. This is how political choices that knowingly or wilfully fail to address poverty and its root causes help build up the pressure and lead to poverty being exported – it is indeed reasonable to speak about policy-led poverty-related migration when policies drive poor people out of their homes and out of their countries. The bigger picture supports this contention.

According to World Bank figures, social safety net spending across the world amounts to a mere 1.5% of the GDP, with lows of less than 0.2% in some countries and peaks of around 7 or even 8%.<sup>15</sup> Adding contribution-based social expenditure, the OECD provides figures of up to 30% of GDP (with France exceeding that figure)<sup>16</sup> and average social spending across the OECD just over 20% of the GDP (c. 28% for the European Union).

But social spending is not a question of means but a political choice: there appears to be no correlation between social safety net expenditure as a share of the GDP and the state of an economy (its size or *per capita* income). States' performance in fighting graft and corruption, their tolerance to tax or capital evasion and a range of other policy choices are indicators of spare capacity which, according to some sources, would largely suffice to eradicate poverty.<sup>17</sup>

However, **in the same way as poverty is not inevitable, exporting poverty need not be inconsequential.** The victims of this abuse are undeniably the individuals and the communities concerned. But the consequences do not stop there.

The receiving countries that, by virtue of international law on human rights, including social rights, secure to everyone within their territory a basic social safety net can claim that they suffer prejudice; they may be redeemers but are also victims. They bear a range of direct and indirect costs as they live up to their own responsibility and respond to the needs of the displaced persons, such as shelter or housing, food, healthcare, education, child services, social care, legal services (for example in respect of guardianship of unaccompanied minors) and many others.

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<sup>15</sup> Social safety net spending understood as “non-contributory measures designed to provide regular and predictable support to poor and vulnerable people”, *World Bank*. The State of Social Safety Nets 2018.

<sup>16</sup> *OECD*. Social Expenditure - Aggregated data. [https://stats.oecd.org/Index.aspx?DataSetCode=SOCX\\_AGG](https://stats.oecd.org/Index.aspx?DataSetCode=SOCX_AGG)

<sup>17</sup> On this, see i.a. Gabriel Zucman, Rutger Bregman or the Panama Papers reports, the country reports of the Council of Europe Group of States against Corruption (GRECO) or Transparency International.

On the surface, after the poor have been driven out it may appear that the problem has been blown away, but responsibility sticks. Ultimately, it remains with the exporter. The solution, or strands of response, may not be easy to articulate and may even be more complex to implement. But nothing is lost by trying. Here are some possible lines of reflection.

- **International litigation** whereby net recipients of poverty would claim compensation for expenditure incurred (or restitution) from net exporters of poverty.
- Individual or interstate **human rights litigation** (e.g. under European human rights law<sup>18</sup>) for the different counts of violations that led to the export of poverty.
- **Litigation assistance** for victims so that they can assert their social and other human rights and seek remedies (including compensation) in their places of origin.
- **Interstate compensation mechanisms** funded by net exporters of poverty to cover expenditure incurred on transit or destination; such mechanisms could be based on international agreements or might be established by supranational organisations.

The European Committee of Social Rights, monitoring compliance with the European Social Charter, applies a “basic needs” approach<sup>19</sup> which might provide a valuable tool for assessing the cost of exported poverty. However, the discussion should avoid the thorny issue of “personal scope”.<sup>20</sup> It is not about who has to pay *up front*, disregarding responsibility. Human rights, including social rights, are and remain universal, indivisible and interdependent or interconnected. The discussion must therefore turn towards ultimate liability: who will foot the bill.

By adopting a decisive rights-based approach on all sides, the osmotic pressure of poverty can be compensated and migration flows can even be reversed. Countries on the low end of the social safety net expenditure scale will find a vested interest in meeting their own human rights—including social rights—obligations by implementing rights compliant policies in respect of poverty instead of policies that increase, perpetuate and export it. The net importers will also cease to see impediment to meeting their own human rights obligations towards everyone within their jurisdiction. In this way, policy makers and administrations or administrators will be encouraged to shift from a zero-sum gamble to a win-win or all-win approach.

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<sup>18</sup> *Council of Europe*, European Convention on Human Rights. Article 33, Inter-State cases, reads “Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.”

<sup>19</sup> See case law under the European Social Charter, *ECSR*, Digest 2018, Council of Europe.

<sup>20</sup> The European Committee of Social Rights has made clear that “the restriction of the personal scope included in the Appendix [to the European Social Charter] should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity” (*Defence for Children International v. the Netherlands*, Complaint No. 47/2008, *ibid*, §19; *International Federation of Human Rights Leagues v. France*, *ibid*, §§ 30 and 31).